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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,025	11/15/2001	Osamu Sekihata	FUJZ 19.163	4988
26304	7590	09/07/2005	EXAMINER	
KATTEN MUCHIN ROSENMAN LLP			WONG, WARNER	
575 MADISON AVENUE			ART UNIT	
NEW YORK, NY 10022-2585			PAPER NUMBER	

2661

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/002,025	Applicant(s) SEKIHATA ET AL.	
	Examiner Warner Wong	Art Unit 2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/15/2001</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Objections***

***Claim Objections***

1. Claims 1 and 5 are objected to because of the following informalities: The phrase "in order that a difference" may be phrased as "where the difference" for better understanding. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Esaki (5,132,964).

Regarding claims 1 and 5, Esaki describes an apparatus/method with a buffer for holding a packet (col. 6, line 11; fig. 3 #20), counting the packet length (col. 6, line 14; fig. 3, #30), reading the held packet at communication line bandwidth and controlling packet transmission (next packet's read start time) based on the (queue) packet length (col. 7, lines 37-44).

Regarding claims 2 and 6, Esaki describes a step of (producing dummy packets) to notify a stop in transmission when the number of packets residing in buffer exceeds (first) threshold A (col. 7, lines 37-38) and end dummy transmission the number of packets residing in buffer is less than (second) threshold D (col. 7, line 42-44).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-4 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esaki.

Regarding claims 3 and 7, Esaki describes a load controlling apparatus for general packet data exchanges.

It would have been obvious to one of ordinary skill in this art at the time of invention by applicant to utilize the method/apparatus of Esaki for subscribers (only) within a network system.

Regarding claims 4 and 8, Esaki only describes an apparatus/method in a truck interface module, but not specifically describing it between the physical and MAC layer.

It would have been obvious of ordinary skill in this art at the time of invention by applicant to understand and implement this similar functionality of transmission (bandwidth) control within an interface module between the physical and MAC layer.

Regarding claim 9, Esaki exemplifies that the invention is applicable for the standardized physical & MAC method of CSMA/CD (col. 14, lines 60-64).

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Esaki in view of Yamaguchi (6,487,211).

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Esaki describes that the apparatus is applicable in general packet communications exchange, but fails to describe that the packet has a variable length.

Yamaguchi describes an apparatus of similar functionality of traffic (bandwidth) control, but via discarding cells/packets based on variable packet lengths (col. 2, lines 2-4).

It would have been obvious of ordinary skill in this art at the time of invention by applicant to modify the apparatus of Yamaguchi to perform traffic control using that of Esaki which is more advantageous than dropping cells. (Esaki col. 3, lines 55-58).

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Warner Wong whose telephone number is 571-272-8197. The examiner can normally be reached on 6:00AM - 3:00PM, M-F.

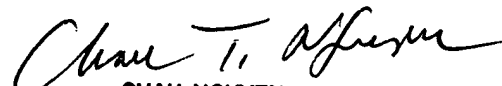
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on 571-272-3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Warner Wong  
Examiner  
Art Unit 2661

WW

  
CHAU NGUYEN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600